

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: GENERIC DIGOXIN AND
DOXYCYCLINE ANTITRUST LITIGATION

MDL No. 2724
No. 16-md-2724

THIS DOCUMENT RELATES TO:
All Actions

HON. CYNTHIA M. RUFE

**APPLICATION OF BONNY E. SWEENEY OF HAUSFELD LLP,
ON BEHALF OF INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL
30 BENEFITS FUND, FOR APPOINTMENT AS LEAD COUNSEL FOR THE
END-PAYER PLAINTIFFS' STEERING COMMITTEE**

Bonny E. Sweeney, counsel to Plaintiff International Union of Operating Engineers Local 30 Benefits Fund (IUOE 30), respectfully requests appointment to, and selection as Interim Lead Counsel of, the EPP Steering Committee pursuant to Fed. R. Civ. P. 23(g)(3). Ms. Sweeney, a partner in Hausfeld LLP, more than satisfies the criteria for such appointment.¹ Her knowledge of and experience with antitrust class actions, her leadership of the EPPs to date, HLLP's resources and expertise as the nation's leader in plaintiffs' antitrust class actions and its two-year investigation of the claims, culminating in the first-filed complaint, all warrant her appointment.²

Experience in Complex Antitrust Class Actions/Knowledge of Applicable Law: With more than 20 years of antitrust class action litigation experience, Ms. Sweeney has led numerous, complex antitrust class actions alleging price-fixing cartels—the core of this action.³ She has a singular depth of experience from case investigation, through discovery, class certification, and trial, having tried two antitrust class actions to a jury—rare in such cases—including one resulting in a \$67 million damages award.⁴ As outlined in the attached biography (Ex. A), her expertise has been repeatedly recognized by the antitrust bar, resulting in numerous awards,

¹ In addition PTO No. 1's criteria, Rule 23(g)(1) factors apply to interim counsel appointments. *See Durso v. Samsung Elecs. Am., Inc.*, No. 12-cv-5352, 2013 WL 4084640, at *2 (D.N.J. Aug. 7, 2013).

² Because Ms. Sweeney and HLLP understand the Court's Order to request briefing regarding only the respective applicants' qualifications for the Court's independent evaluation, they will present their views on an appropriate leadership structure and size, the support of other counsel that Ms. Sweeney enjoys, and endorsement of certain firms for appointment to the PSC in subsequent briefs.

³ *E.g.*, *In re Payment Card Interchange Fee and Merch. Disc. Antitrust Litig.*, No. 05-md-1720 (E.D.N.Y.) (prosecuted by Ms. Sweeney while chairing Robbins, Geller, Rudman & Dowd's (RGRD) antitrust group); *In re Aftermarket Auto Lights Antitrust Litig.*, No. 09-ml-2007 (C.D. Cal.) (personal appointment as co-lead counsel; \$50 million settlement); *In re Currency Conversion Fee Antitrust Litig.*, MDL No. 1409 (S.D.N.Y.) (prosecuted by Ms. Sweeney while leading RGRD's antitrust group; \$336 million settlement).

Ms. Sweeney, together with HLLP, serves as co-lead interim counsel in *In re Contact Lens Antitrust Litig.*, No. 15-md-2626 (M.D. Fla.), *In re Packaged Seafood Prods. Antitrust Litig.*, No. 15-md-2670 (S.D. Cal.), and *In re Parking Heaters Antitrust Litig.*, No. 15-mc-940 (E.D.N.Y.).

⁴ *See In re iPod iTunes Antitrust Litigation*, No. 05-cv-37 (N.D. Cal.) (lead trial counsel); *Law/Hall/Schreiber v. NCAA*, Nos. 94-cv-2053, 94-cv-2392, 95-cv-2026 (D. Kan.) (jury award).

including recognition by *Competition Law 360* as an “Outstanding Woman” in antitrust and as “Litigator of the Week” by *Global Competition Review*. She is vice-chair of the ABA Antitrust Section’s Trial Practice Committee, has chaired the California Bar’s Antitrust Section, and regularly lectures on antitrust law and class actions.⁵

In addition, HLLP is one of the nation’s leading plaintiffs’ antitrust class action firms; it is the only plaintiffs’ firm in the nation ranked by *Legal 500* in the top tier for Antitrust/Competition, and is the only firm among EPPs here ranked in the top tier for Civil Litigation/Class Actions. That expertise has led to the appointment of HLLP and its attorneys to leadership positions in more than 25 antitrust class actions since its formation in 2008, including *In re Processed Egg Products Antitrust Litigation*, No. 08-md-2002 (E.D. Pa.), and today’s most complex antitrust actions,⁶ and has resulted in a string of trial and settlement successes. *See* Firm Resume at 5-7, 10 (Ex. D). The firm also has expertise in pharmaceutical antitrust litigation, including leadership appointments in cases such as *In re Thalomid and Revlimid Antitrust Litigation*, No. 14-cv-6997 (D.N.J.), where HLLP is co-lead counsel for end-payer plaintiffs.⁷

HLLP’s Investigation and Development of the Claims: HLLP attorneys began their painstaking investigation and identification of the EPPs’ claims more than two years ago. IUOE

⁵ Ms. Sweeney will be assisted by a team including (1) Brent Landau, a partner in HLLP’s Philadelphia office who manages *In re Air Cargo Shipping Services Antitrust Litigation*, No. 06-md-1775 (E.D.N.Y.) on behalf of co-lead HLLP, involving more than 30 defendants and resulting in settlements exceeding \$1.2 billion, and (2) Jeannine Kenney, an experienced senior associate who recently managed an antitrust class action involving more than 20 defendants. *See* attached biographies (Ex. B & C).

⁶ These include *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13-cv-7789 (S.D.N.Y.); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-md-2262 (S.D.N.Y.); *In re Air Cargo Shipping Services Antitrust Litig.*, No. 06-md-1775 (E.D.N.Y.); and *In re Blue Cross Blue Shield Antitrust Litig.*, No. 13-cv-20000 (MDL No. 2406) (N.D. Ala.); *In re Domestic Airline Travel Antitrust Litig.*, No. 15-mc-01404 (D.D.C.), among others.

⁷ Other pharmaceutical cases HLLP has litigated include *Jabo’s Pharmacy, Inc. v. King Pharm., Inc.*, No. 31,973 (Cir. Ct., Cocke Cty., Tenn.), where Mr. Landau was appointed co-lead counsel for an indirect drug purchasers class, and related federal litigation, *In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 12-md-2343 (E.D. Tenn.), as well as *Hartig Drug Co. v. Senju Pharm. Co.*, No. 14-cv-719 (D. Del.).

30's meticulously supported complaint—the first to bring these claims—reflects this careful investigation. HLLP studied peer-reviewed literature, numerous public and private reports,⁸ the 2014 Senate hearing records, SEC filings, and earnings call transcripts. It analyzed pricing trends and generated pricing charts, compared U.S. prices with those in other countries, and consulted with an economic expert. Many (and, in some cases, all) of IUOE's thorough factual allegations were adopted verbatim or used as a model by many end-payer and direct purchaser plaintiffs (DPPs) that filed later, demonstrating both the depth and value of HLLP's investigation and why Ms. Sweeney should be appointed to lead the EPP action.

Ability to Work Cooperatively with Others: Ms. Sweeney and HLLP have a history of cooperating with counsel in this action and others. Here, they have organized the EPPs to date, functioning inclusively and seeking consensus. For example, Ms. Sweeney organized and hosted a planning meeting among all EPPs and DPPs, and, along with Ms. Kenney, has served as the primary EPP contact with DPPs and Defendants, taking the lead in negotiating and drafting stipulations, tolling agreements, the Plaintiffs' joint liaison submission, and a proposed pretrial order. And in prior and pending class actions, Ms. Sweeney has worked cooperatively and collegially with her colleagues, many of whom serve as counsel for other EPPs here.

Ability and Willingness to Commit Resources to the Class: With 69 lawyers in its five U.S. and three European offices, including Philadelphia, HLLP has the needed resources to commit to this litigation. And, as shown by her organizational leadership of the EPPs to date, Ms. Sweeney is eager and available to lead this action and would be honored to be selected by this Court for that role.

⁸ These include reports by the Government Accounting Office, the Congressional Budget Office, the American Association of Retired Persons, the Generic Pharmaceutical Association, DHSS's Inspector General and Office of the Assistant Secretary for Planning & Evaluation, and Elsevier Clinical Solutions, among others, as well as records in prior litigation.

Dated: September 23, 2016

Respectfully submitted,

/s/ Bonny E. Sweeney

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CERTIFICATE OF SERVICE

I hereby certify that on this the 23rd day of September 2016 the foregoing APPLICATION OF BONNY E. SWEENEY OF HAUSFELD LLP, ON BEHALF OF INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 30 BENEFITS FUND, FOR APPOINTMENT AS LEAD COUNSEL FOR THE END-PAYER PLAINTIFFS' STEERING COMMITTEE was filed with the Clerk of the Court, per the Local Rules, and will be available for viewing and downloading via the CM/ECF system. The CM/ECF system will automatically send notification of such filing to all attorneys of record who are registered with the Court's ECF system.

Service was also effectuated via mail on the following counsel who do not appear on the Court's ECF notice mailing list:

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Dated: September 23, 2016

/s/ Jeannine M. Kenney
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